

CCRB INVESTIGATIVE RECOMMENDATION

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|---------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|-------------------------------------|-------------------------------------------------------|-----------------------------------------------|---------------------------------|
| Investigator: Laura Kastner | Team: Squad #12 | CCRB Case #: 201509979 | <input type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input checked="" type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Wednesday, 09/30/2015 3:10 PM | Location of Incident: Valentine Avenue and East 194th Street; En route to and at the 52nd Precinct stationhouse | Precinct: 52 | 18 Mo. SOL 3/30/2017 | EO SOL 3/30/2017 | |
| Date/Time CV Reported Mon, 11/23/2015 3:50 PM | CV Reported At: CCRB | How CV Reported: On-line website | Date/Time Received at CCRB Mon, 11/23/2015 3:50 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |
| | | |

| Subject Officer(s) | Shield | TaxID | Command |
|--------------------------|--------|--------|---------|
| 1. An officer | | | 052 PCT |
| 2. POM Brandon Gembecki | 01517 | 949015 | 052 PCT |
| 3. POM Adam Landesberg | 15894 | 949195 | 052 PCT |
| 4. POM James Lundy | 07817 | 950788 | 052 PCT |
| 5. SGT Charles Cavallaro | 4758 | 938197 | 052 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|-------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| A.SGT Charles Cavallaro | Abuse: At Valentine Avenue and East 194th Street in the Bronx, Sgt. Charles Cavallaro stopped § 87(2)(b) | |
| B.POM Brandon Gembecki | Abuse: At Valentine Avenue and East 194th Street in the Bronx, Police Officer Brandon Gembecki frisked § 87(2)(b) | |
| C.POM Brandon Gembecki | Abuse: At Valentine Avenue and East 194th Street in the Bronx, Police Officer Brandon Gembecki searched § 87(2)(b) | |
| D.SGT Charles Cavallaro | Discourtesy: En route to the 52nd Precinct stationhouse, Sergeant Charles Cavallaro spoke discourteously to § 87(2)(b) and § 87(2)(b) | |
| E.SGT Charles Cavallaro | Off. Language: En route to the 52nd Precinct stationhouse, Sergeant Charles Cavallaro made remarks to § 87(2)(b) and § 87(2)(b) based upon race. | |
| F.POM Brandon Gembecki | Discourtesy: En route to the 52nd Precinct stationhouse, Police Officer Brandon Gembecki spoke discourteously to § 87(2)(b) and § 87(2)(b) | |
| G.POM Adam Landesberg | Discourtesy: En route to the 52nd Precinct stationhouse, Police Officer Adam Landesberg spoke discourteously to § 87(2)(b) and § 87(2)(b) | |
| H.POM James Lundy | Discourtesy: En route to the 52nd Precinct stationhouse, Police Officer James Lundy spoke discourteously to § 87(2)(b) and § 87(2)(b) | |
| I. An officer | Off. Language: En route to the 52nd Precinct stationhouse, an officer made a remark based upon the gender of § 87(2)(b) | |

| Officer(s) | Allegation | Investigator Recommendation |
|-------------------------|-------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| J. An officer | Discourtesy: At the 52nd Precinct stationhouse, an officer spoke discourteously to § 87(2)(b) | |
| K.SGT Charles Cavallaro | Abuse: At various locations, Sergeant Charles Cavallaro refused to provide his shield number to § 87(2)(b) and § 87(2)(b) | |
| L.POM Adam Landesberg | Abuse: At various locations, Police Officer Adam Landesberg refused to provide his shield number to § 87(2)(b) and § 87(2)(b) | |
| M.POM James Lundy | Abuse: At various locations, Police Officer James Lundy refused to provide his shield number to § 87(2)(b) and § 87(2)(b) | |
| N.POM Brandon Gembecki | Abuse: At the 52nd Precinct stationhouse, Police Officer Brandon Gembecki issued a summons to § 87(2)(b) | |
| | OMN: At various locations, Sergeant Charles Cavallaro failed to supervise the stop of § 87(2)(b) | |

Case Summary

On November 23, 2015, § 87(2)(b) filed this complaint with the CCRB via the online website on behalf of himself and his girlfriend, § 87(2)(b). On September 30, 2015 at approximately 3:10 p.m., § 87(2)(b) and § 87(2)(b) purchased items at a deli and began walking home. In the vicinity of Valentine Avenue and East 194th Street in Bronx, § 87(2)(b) was stopped by Sgt. Charles Cavallaro, PO Brandon Gembecki, PO Adam Landesberg, and PO James Lundy, all from the 52nd Precinct, for fitting the description of a wanted homicide suspect (**Allegation A**).

§ 87(2)(b) alleged that Sgt. Cavallaro frisked and searched him, but the investigation determined that PO Gembecki was the officer who frisked and searched § 87(2)(b) (**Allegations B and C**). PO Gembecki recovered marijuana from § 87(2)(b)'s pants pocket. After the officers placed § 87(2)(b) inside their patrol vehicle to transport him to the stationhouse, § 87(2)(b) who had followed the officers and § 87(2)(b) touched the handle of one of the patrol vehicle's doors, and was handcuffed and transported to the stationhouse as well.

En route to the 52nd Precinct stationhouse, Sgt. Cavallaro allegedly spoke discourteously to § 87(2)(b) and § 87(2)(b) (**Allegation D**) and allegedly spoke offensively to § 87(2)(b) (**Allegation E**). Additionally, PO Gembecki, PO Landesberg, and PO Lundy allegedly made discourteous statements toward § 87(2)(b) and § 87(2)(b) (**Allegations F through H**). One of the officers, § 87(2)(b) could not recall who, allegedly called her a "bitch" (**Allegation I**). At the stationhouse, an officer allegedly made additional discourteous statements toward § 87(2)(b) (**Allegation J**). Throughout the incident, Sgt. Cavallaro, PO Landesberg, and PO Lundy allegedly refused to provide their shield numbers to § 87(2)(b) and § 87(2)(b) (**Allegations K through M**).

§ 87(2)(b) was released from the stationhouse with a summons for § 87(2)(b) § 87(2)(a) 160.50 and a summons for § 87(2)(b), § 87(2)(a) 160.50 (**Allegation N**), both of which were dismissed (Board Review 01 and Board Review 02). § 87(2)(b) was released with a summons for § 87(2)(b), § 87(2)(a) 160.50, which according to § 87(2)(b) was also dismissed. § 87(2)(g)

There is no video evidence in this case.

This case was delayed due to § 87(2)(b) filing it nearly one month after the incident date, § 87(2)(b) missing her first two scheduled interview appointments, and three of the officers being unidentified until the first officer interview.

This case was reassigned from Inv. Tiffany Dempsey to Inv. Laura Kastner on February 2, 2016, upon Inv. Dempsey's departure from the agency.

Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation.
- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
(Board Review 03).
- § 87(2)(b) has not been convicted of a crime within the last 10 years (Board Review 04).

Civilian and Officer CCRB Histories

- This is the first CCRB complaint in which § 87(2)(b) and § 87(2)(b) are participants (Board Review 05).
- Sgt. Cavallaro, a 10-year-member-of-service, has 11 prior CCRB complaints filed against him, with a total of 15 allegations, none of which were substantiated. His CCRB history contains one discourtesy allegation, which was unsubstantiated, and allegations of a stop, frisk, and search, which were closed as victim uncooperative.
- PO Gembecki, a five-year-member-of-service, has three prior CCRB complaints filed against him, with a total of three allegations, none of which were substantiated. One of his prior allegations was for a stop, which was exonerated.
- PO Landesberg, a four-year-member-of-service, has one prior CCRB complaint filed against him. § 87(2)(g)
- PO Lundy, a five-year-member-of-service, has one prior CCRB complaint filed against him. § 87(2)(g)

Findings and Recommendations

Explanation of Subject Officer Identification

- Given Sgt. Cavallaro's supervisory role at the scene and his acknowledged participation in the stop of § 87(2)(b) Allegation A has been pled to Sgt. Cavallaro.
- Although § 87(2)(b) alleged that the operator of the officers' vehicle, which was Sgt. Cavallaro, frisked and searched him, PO Gembecki acknowledged being the officer who did so and Allegations B and C have therefore been pled to PO Gembecki.
- § 87(2)(b) and § 87(2)(b) alleged that the operator of the officers' vehicle and the officer who seemed to be in charge spoke discourteously and offensively toward them. As such, Allegations D and E have been pled to Sgt. Cavallaro. § 87(2)(b) further alleged that PO Gembecki, PO Landesberg, and PO Lundy also spoke discourteously and that one of the officers, she could not recall who, called her a "bitch." Thus, Allegations D and E have been pled to Sgt. Cavallaro, allegations F, G, and H have been pled to PO Gembecki, PO Landesberg, and PO Lundy, respectively, and Allegations I and J have been pled to "An officer."
- PO Gembecki issued § 87(2)(b) the § 87(2)(b), § 87(2)(a) 160.50 summons and he said he did so upon having a conversation with Sgt. Cavallaro and the remaining officers in regard. Allegation F has therefore been pled to PO Gembecki. Additionally for the same reason, as well as the fact that Sgt. Cavallaro consistently failed to supervise the stop of § 87(2)(b) throughout this incident, Allegation K has been pled to him.
- § 87(2)(b) and § 87(2)(b) alleged that they asked all of the officers for their shield numbers, but that PO Gembecki was the only officer to provide his shield number to them. Allegations H, I, and J have been pled accordingly.

Allegations not Pled

- **Force – Physical Force:** § 87(2)(b) alleged that when the officers approached him from behind, PO Gembecki immediately grabbed his shirt and shoulder and pushed him toward a wall before frisking and searching him. Since § 87(2)(b)'s statement indicates that this was done as a means to stop him, not as a separate action, the physical force allegation has been subsumed within the stop allegation.

- **Abuse** – § 87(2)(b) alleged that as § 87(2)(b) took photos on her cell phone at the initial scene, Sgt. Cavallaro told her that it was illegal to take photos of officers while they were affecting an arrest. However, § 87(2)(b) the would-be victim of this allegation, made no mention of this. Additionally, both civilians said an officer later took § 87(2)(b)'s phone out of her hand, but this undisputedly occurred after the officers had commenced placing her under arrest. Thus, no phone interference allegation is pled.

Allegation A –Abuse of Authority: At Valentine Avenue and East 194th Street in the Bronx, Sgt. Charles Cavallaro stopped § 87(2)(b)

Allegation B –Abuse of Authority: At Valentine Avenue and East 194th Street in the Bronx, Police Officer Brandon Gembecki frisked § 87(2)(b)

It is undisputed that Sgt. Cavallaro, PO Gembecki, PO Landesberg, and PO Lundy stopped § 87(2)(b) because they believed he fit the description of a homicide suspect for whom they had seen wanted posters hanging at the 52nd Precinct stationhouse. Additionally, PO Gembecki acknowledged frisking § 87(2)(b) for weapons once the stop was initiated.

The wanted poster (Board Review 06) specified that 10 days prior to this incident and at the exact location where this incident occurred, the wanted suspect shot the homicide victim, causing the victim's death. Three blurry photos of a black man with shoulder length braids are depicted and a matching description is noted.

§ 87(2)(b) (Board Review07), who identified himself as a black man on his Confidential Witness Information Sheet (Board Review 08), confirmed that during this incident, his hair was styled in shoulder length braids. Following this incident, § 87(2)(b) saw and provided to the CCRB, a copy of a Crime Stoppers reward poster for the same homicide, but this poster included a close up of the wanted homicide suspect's face (Board Review 09). While it is evident from this poster that § 87(2)(b) was not the wanted homicide suspect, all four officers were consistent in their assertion that they had not seen the close up photo prior to this incident.

An officer may stop an individual when there is reasonable suspicion to believe that individual has committed, is committing, or is about to commit a crime. An officer may frisk an individual when the officer has reasonable suspicion that the individual is in possession of a weapon. People v. DeBour, 40 N.Y.2d 210 (1976) (Board Review 10). Reasonable suspicion is present when there is a close resemblance between a suspect's appearance and that of a suspect in a wanted poster. People v. Reed, 106 A.D.3d 673 (App. Div. 1st Dept. 2013) (Board Review 11).

§ 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

Allegation C –Abuse of Authority: At Valentine Avenue and East 194th Street in the Bronx, Police Officer Brandon Gembecki searched § 87(2)(b)

§ 87(2)(b) alleged that after frisking his front and rear pants pockets, PO Gembecki, identified via investigation, reached his hand inside of each of § 87(2)(b)'s pockets and removed a bag of marijuana from § 87(2)(b)'s right front pants pocket. PO Gembecki then

allegedly placed his hand inside of the front and back of § 87(2)(b)'s underwear and felt around § 87(2)(b)'s genitals and buttocks areas with negative results.

§ 87(2)(b) (Board Review 12) denied being present when the marijuana was recovered from § 87(2)(b)'s person, but she said that she was present when an officer, she could not recall who, first grabbed § 87(2)(b)'s genitals area, outside of his clothing, and squeezed, and then squeezed over “the rest” of § 87(2)(b)'s clothing. § 87(2)(b) could not elaborate further.

PO Gembecki (Board Review 13) and PO Landesberg (Board Review 14) said that prior to frisking § 87(2)(b) PO Gembecki asked if § 87(2)(b) had anything on him that he should not have and that § 87(2)(b) said he had a “nickel bag” of marijuana. PO Gembecki said that after frisking § 87(2)(b) he asked where the marijuana was located and when § 87(2)(b) told him which pocket the marijuana was located inside, PO Gembecki reached into that pocket and removed the marijuana, although he denied conducting the more intrusive search alleged.

PO Lundy (Board Review 15) said that § 87(2)(b) admitted to PO Gembecki that he had marijuana on his person, but PO Lundy could not recall the circumstances that led to § 87(2)(b)'s admission. Sgt. Cavallaro (Board Review 16) said he turned away from the scene to call the 52nd Precinct's detective squad and that when he turned back, the marijuana had already been recovered.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation D – Discourtesy: En route to the 52nd Precinct stationhouse, Sergeant Charles Cavallaro spoke discourteously to § 87(2)(b) and § 87(2)(b)

Allegation E – Offensive Language: En route to the 52nd Precinct stationhouse, Sergeant Charles Cavallaro made remarks to § 87(2)(b) and § 87(2)(b) based upon race.

Allegation F – Discourtesy: En route to the 52nd Precinct stationhouse, Police Officer Brandon Gembecki spoke discourteously to § 87(2)(b) and § 87(2)(b)

Allegation G – Discourtesy: En route to the 52nd Precinct stationhouse, Police Officer Adam Landesberg spoke discourteously to § 87(2)(b) and § 87(2)(b)

Allegation H – Discourtesy: En route to the 52nd Precinct stationhouse, Police Officer James Lundy spoke discourteously to § 87(2)(b) and § 87(2)(b)

Allegation I –Offensive Language: En route to the 52nd Precinct stationhouse, an officer made a remark based upon the gender of § 87(2)(b)

Allegation J –Discourtesy: At the 52nd Precinct stationhouse, an officer spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged that once inside of the transport vehicle, Sgt. Cavallaro told him that the situation never would have happened if § 87(2)(b) had parents and that the officers were going to stop every black person, regardless of how they looked. § 87(2)(b) further alleged that when he stated that he was well-educated in the law, Sgt. Cavallaro replied, “You’re a nigger.” § 87(2)(b) said that when Sgt. Cavallaro made all of the above statements to § 87(2)(b) he was speaking to her as well. She alleged that en route to the stationhouse, whilst the civilians and officers engaged in a verbal back and forth, Sgt. Cavallaro also called her and § 87(2)(b) stupid, dumb, and uneducated, and that all of the officers used profanity, although she could not recall specific profane statements made by the other officers. § 87(2)(b) further alleged that one of the officers called her a “bitch,” but she could not recall which officer did so.

As the transport vehicle parked in front of the stationhouse, § 87(2)(b) alleged that she asked where her cell phone, which was removed after she was handcuffed, was, and that Sgt. Cavallaro said, “I threw it away. Oh fucking well.” Finally, § 87(2)(b) alleged that near the front desk of the stationhouse, one of the officers, she could not recall which one, said that § 87(2)(b) would not shut the “fuck” up and that she was “fucking annoying.” § 87(2)(b) did not allege any of the additional discourteous or offensive statements that § 87(2)(b) alleged.

§ 87(2)(g)

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Allegation K –Abuse of Authority: At various locations, Sergeant Charles Cavallaro refused to provide his shield number to § 87(2)(b) and § 87(2)(b)

Allegation L –Abuse of Authority: At various locations, Police Officer Adam Landesberg refused to provide his shield number to § 87(2)(b) and § 87(2)(b)

Allegation M –Abuse of Authority: At various locations, Police Officer James Lundy refused to provide his shield number to § 87(2)(b) and § 87(2)(b)

§ 87(2)(b) said that at the initial scene, en route to the stationhouse, and at the stationhouse, he asked all of the officers in general statements, for their shield numbers a total of five or six times. § 87(2)(b) said that she asked all of the officers in one general statement for their shield numbers en route to the stationhouse. Both civilians allege that Sgt. Cavallaro, PO Landesberg, and PO Lundy refused to provide their shield numbers and that at the conclusion of the incident, as PO Gembecki was issuing them their summonses, they asked him for the other officers’ shield numbers, but that PO Gembecki said he could only provide his own information. PO Gembecki then handed them their summonses, which listed his information.

PO Gembecki and Sgt. Cavallaro denied being asked to provide their shield numbers at the initial scene and en route to the stationhouse, but they acknowledged being individually asked

for their shield number at the stationhouse, and they said they provided the requested information to the civilians at that time. When asked whether Sgt. Cavallaro heard the civilians ask any other officer for their shield number, he stated, “I just remember that I gave them my name and shield number.” PO Lundy did not recall being asked for his shield number throughout the incident and he said he never provided his shield number to either civilian.

When asked whether § 87(2)(b) or § 87(2)(b) asked PO Landesberg for his shield number at the initial scene, PO Landesberg first said, “Um...I believe so. We told § 87(2)(b) we’d give it to her at... or we [verbally] told them [our shield numbers] and then we told them that we could write it down for them at the precinct if they wanted.” He then stated that he believed the request was made en route to the stationhouse and that it was for all of the officers’ shield numbers. PO Landesberg said that “if” § 87(2)(b) asked him for his shield number, he “had no problem” verbally providing his shield number to her, but that “if” she asked PO Gembecki, PO Landesberg did not speak over PO Gembecki just to provide his information to § 87(2)(b). Upon PO Landesberg’s PBA Representative’s prompting during his CCRB interview, PO Landesberg confirmed that § 87(2)(b) eventually obtained each officer’s shield number.

§ 87(2)(g)

Allegation N –Abuse of Authority: At the 52nd Precinct stationhouse, Police Officer Brandon Gembecki issued a summons to § 87(2)(b)

It is undisputed that PO Gembecki issued § 87(2)(b) a § 87(2)(b), § 87(2)(a) 160.50 summons during this incident. The summons (Board Review 17) fails to note a subsection, but the factual allegations section notes that § 87(2)(b) crossed the street causing motor vehicles to stop. § 87(2)(b) acknowledged crossing the street prior to being stopped, but denied that there was any vehicular traffic present. The summons was dismissed in criminal court (Board Review 02).

PO Gembecki said that as the officers approached § 87(2)(b) to conduct the stop, § 87(2)(b) and § 87(2)(b) were jaywalking while crossing Briggs Avenue against the signal. There were no markings on the pavement designating the crosswalk, but § 87(2)(b) and § 87(2)(b) were walking “at the place where you would cross the street.” Traffic was busy with vehicular traffic and school children and parents walking around. PO Gembecki said that § 87(2)(b) and § 87(2)(b)’s jaywalking caused vehicles from Briggs Avenue that were crossing East 194th Street to slow down. PO Gembecki could not estimate how many vehicles were affected. He did not recall any vehicle horns being honked.

PO Landesberg said he stayed in the deli to purchase items as the other officers stopped § 87(2)(b). PO Landesberg denied witnessing the initial aspects of the stop. Conversely, PO Lundy said he was on the phone at the time and not paying much attention, but that he saw § 87(2)(b) cross the street against the walk signal. PO Lundy could not recall whether any vehicles stopped as a result of § 87(2)(b) crossing the street.

Sgt. Cavallaro initially said that later on at the stationhouse, he instructed PO Gembecki, identified via investigation, to release § 87(2)(b) with a summons for § 87(2)(b), § 87(2)(a) 160.50 and to release § 87(2)(b) with a summons for § 87(2)(b), § 87(2)(a) 160.50. He later said he could not recall whether he provided PO Gembecki with instructions on which summonses to issue or told him to issue unspecified summonses to the civilians. Upon being presented with § 87(2)(b)

§ 87(2)(b) s § 87(2)(b), § 87(2)(a) 160.50 summons during his CCRB interview, Sgt. Cavallaro said he did not recall how § 87(2)(b) crossed the street, although he initially said he never lost sight of § 87(2)(b) prior to the officers stopping him.

§ 87(2)(b) was issued a § 87(2)(b), § 87(2)(a) 160.50 summons as a result of this incident (Board Review 18), but not for crossing the street causing motor vehicles to stop. Although PO Gembecki once again failed to note a subsection, the factual allegations of § 87(2)(b)'s summons note that she blocked the officers as they escorting § 87(2)(b) toward the transport vehicle, refused to allow the officers to place § 87(2)(b) inside of the vehicle, and subsequently opened the vehicle door in an attempt to remove § 87(2)(b).

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he obstructs vehicular or pedestrian traffic. New York State Penal Law, Section 240.20(5) (Board Review 19).

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

[Redacted text block]

Squad: #12

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date